



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2012-0546; FRL-9910-18-OAR]

RIN 2060-AS21

Regulation of Fuels and Fuel Additives: 2013 Cellulosic Biofuel Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to revise the 2013 cellulosic biofuel standard published on August 15, 2013. This action follows from EPA having granted two petitioners' requests for reconsideration of the 2013 cellulosic biofuel standard. EPA granted reconsideration because one of the two companies that EPA expected to produce cellulosic biofuel in 2013 announced soon after EPA signed its final rule that it intended to produce substantially lower volumes of cellulosic biofuel in 2013 than it had earlier reported to EPA. Since the cellulosic biofuel standard was based on EPA's projection of cellulosic biofuel production in 2013, EPA deemed this new information to be of central relevance to the rule, warranting reconsideration. On reconsideration, EPA is directed to base the standard on the lower of "projected" production of cellulosic fuel in 2013 or the cellulosic biofuel applicable volume set forth in the statute. Since data are available to show actual production volumes for 2013, EPA's "projection" and final rule are based on actual cellulosic biofuel production in 2013. This action only affects the 2013 cellulosic biofuel standard; all other RFS standards remain unchanged. EPA is finalizing a revised cellulosic biofuel standard of 0.0005% for 2013.

DATES: This rule is effective on [insert 60 days from the date of publication in the Federal Register] without further notice, unless EPA receives relevant adverse comment by [insert date 30 days from date of publication in the Federal Register]. If EPA receives relevant adverse comment, we will publish a timely withdrawal of this direct final rule in the Federal Register informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2012-00546, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: a-and-r-docket@epa.gov.
- Mail: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
- Hand Delivery: EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2012-0546. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise

protected through www.regulations.gov or e-mail. The www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. {For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor MI 48105; Telephone number: 734-214-4131; Fax number: 734-214-4816; E-mail address: macallister.julia@epa.gov, or the public information line for the Office of Transportation and Air Quality; telephone number (734) 214-4333; E-mail address OTAQ@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is EPA Using a Direct Final Rule?

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action. This action amends the 2013 cellulosic biofuel standard that was finalized in “Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards; Final Rule,” (August 15, 2013; 78 FR 49794). Finalizing this adjusted 2013 cellulosic biofuel standard expeditiously will reduce regulatory uncertainty and avoid unnecessary cost or burden for obligated parties. Until this adjusted cellulosic biofuel standard is finalized, obligated parties will have to comply with the current and significantly higher 2013 cellulosic biofuel standard. This would likely involve a substantial purchase of cellulosic waiver credits, which EPA would subsequently need to reimburse. This action follows from EPA having granted, on January 23, 2014, requests for reconsideration of the 2013 cellulosic biofuel standard submitted by the American Petroleum Institute and the American Fuel & Petrochemical Manufacturers. In granting reconsideration, EPA determined that petitioners had met the statutory criteria of section

307(d)(7)(B) of the Clean Air Act, since petitioners had identified new information of central relevance that became available after the comment period closed but within the time period specified for parties to seek judicial review.

In the “Proposed Rules” section of today’s Federal Register, we are publishing a separate document that will serve as the proposed rule to revise the 2013 cellulosic standard if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the ADDRESSES section of this document.

If EPA receives relevant adverse comment or a request for a public hearing, we will publish a timely withdrawal in the Federal Register informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

II. Does this Action Apply to Me?

Entities potentially affected by this direct final rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol and biodiesel. Potentially regulated categories include:

Category	NAICS ¹ Codes	SIC ² Codes	Examples of Potentially Regulated Entities
Industry	324110	2911	Petroleum Refineries
Industry	325193	2869	Ethyl alcohol manufacturing
Industry	325199	2869	Other basic organic chemical manufacturing
Industry	424690	5169	Chemical and allied products merchant wholesalers
Industry	424710	5171	Petroleum bulk stations and terminals
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers
Industry	454319	5989	Other fuel dealers

¹ North American Industry Classification System (NAICS)

² Standard Industrial Classification (SIC) system code

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities would be regulated by this action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

Outline of this Preamble

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 - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act
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K. Congressional Review Act

VI. Statutory Authority

I. Executive Summary

On October 10, 2013, and October 11, 2013, the U.S. Environmental Protection Agency (EPA) received petitions from the American Fuel & Petrochemical Manufacturers and the American Petroleum Institute requesting that EPA reconsider portions of the final rule entitled *Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards*¹. Petitioners noted the substantial reduction (from 3-5 million gallons to 1-2 million gallons) in anticipated cellulosic biofuel production in 2013 that was announced shortly after EPA signed its final rule by one of two companies expected to produce cellulosic biofuel in 2013. After review, EPA determined that the petitions for reconsideration with regard to the 2013 cellulosic biofuel standard had demonstrated the statutory criteria specified in Section 307(d)(7)(B) of the Clean Air Act for the reconsideration. On January 23, 2014, the Administrator notified petitioners that their petitions, with regard to the 2013 cellulosic biofuel standard, had been granted and that EPA would initiate a notice and comment rulemaking to reconsider the standard.²

In this rulemaking, EPA is revising the 2013 cellulosic biofuel standard. In reconsidering the earlier cellulosic standard, EPA is directed to base the standard on the lower of the “projected” production volume of cellulosic fuel in 2013 or the cellulosic biofuel volume target set forth in the statute. At this time, since data are available to show actual production volumes of cellulosic for 2013, our “projection” is based on actual cellulosic production in 2013. Specifically, we are calculating the volume of

¹ 78 FR 49794 (August 15, 2013).

² EPA has not yet taken action on aspects of these petitions that relate to matters other than the 2013 cellulosic biofuel standard.

cellulosic biofuel to be used in 2013 by reference to the actual number of cellulosic biofuel renewable identification numbers (RINs) generated and reported through the EPA Monitored Transaction System (EMTS) in 2013.

In 2013 a total of 818,517 cellulosic biofuel RINs were generated.³ Of this total, 8,332 RINs were invalidly generated and were retired.⁴ This leaves a total of 810,185 cellulosic biofuel RINs that are available for use by obligated parties. EPA believes that the EMTS data best represent the number of cellulosic RINs actually produced in 2013 and are therefore an appropriate volume on which to base the required volume of cellulosic biofuel for 2013.

The percentage standard for cellulosic biofuel for 2013 is shown below in Table I-

1. The specific formula we used in calculating the cellulosic renewable fuel percentage standard is contained in the regulations at 40 CFR §80.1405 and described in Section V of this preamble. The percentage standard for cellulosic biofuel represents the ratio of the renewable fuel volume we have determined should be required for 2013 to the non-renewable gasoline and diesel volume used in 2013, with appropriate corrections. Detailed calculations can be found in Section IV, including a description of the 2013 gasoline and diesel volumes used.

³ Sum of D3 RINs (422,740) and D7 RINs (395,777) generated in 2013. Data from the EMTS. (last accessed February 25, 2014)

⁴ Data from the EMTS. (last accessed March 19, 2014)

Table I-1 Percentage Standards for 2013

Cellulosic biofuel	0.0005%
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Since EPA's revised cellulosic biofuel standard for 2013 is lower than the pre-existing standard, it is possible that some obligated parties may have purchased more cellulosic waiver credits than will ultimately be needed for 2013 compliance. EPA will issue a refund for all such excess cellulosic waiver credits.

II. Assessment of the Petitions for Reconsideration of the Cellulosic Biofuel Standard

On August 6, 2013, EPA finalized the annual standard for cellulosic biofuel as required under the Clean Air Act Section 211(o).⁵ EPA set the 2013 cellulosic biofuel percentage standard using the volume of cellulosic biofuel (6 million ethanol-equivalent gallons) that EPA expected to be produced and used in the United States in 2013. This projection was based on expected production from two companies: INEOS Bio (0 – 1 million actual gallons, 0 – 1 million ethanol-equivalent gallons) and KiOR (3 – 4 million actual gallons, 5 – 6 million ethanol-equivalent gallons). KiOR's facility is located in Columbus, Mississippi, while INEOS Bio's facility is located in Vero Beach, Florida.

EPA subsequently received petitions from the American Fuel & Petrochemical Manufacturers and American Petroleum Institute, dated October 10 and October 11, 2013, respectively, requesting that EPA reconsider the 2013 cellulosic biofuel standard and other parts of the rule entitled *Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards*.

⁵ 78 FR 49794, August 15, 2013.

Both the American Petroleum Institute and the American Fuel & Petrochemical Manufacturers in their petitions for reconsideration cited a conference call held by KiOR on August 8, 2013, two days after EPA finalized the 2013 rule, as providing new information that required EPA to reconsider its 2013 cellulosic biofuel standard. In this conference call, KiOR issued updated guidance on their expected volume of cellulosic biofuel production in 2013 and KiOR lowered its projection to 1 – 2 million actual gallons in 2013. This represented a significant reduction from KiOR’s previous projection of 3 – 5 million actual gallons in a May 9, 2013, conference call. This updated KiOR guidance was also lower than EPA’s projected cellulosic biofuel production from KiOR’s facility of 3 – 4 million actual gallons, which had been based in part on information from the earlier May 9, 2013, conference call. KiOR’s announcement on August 8, 2013, therefore clearly represents new information that was not available during the comment period, and which became available after the comment period had closed but within the period for parties to seek judicial review.

EPA next considered whether the objection was of central relevance to the outcome of the rule. EPA interprets the phrase “of central relevance to the outcome of the rule” to mean that the objection provides substantial support for the argument that the regulation should be revised. Because we projected that only two firms would contribute to the cellulosic biofuel volume in 2013, and because KiOR’s anticipated production reflected more than 80% of our volume projection, KiOR’s reduced production estimate for 2013 from 3 – 5 million actual gallons of cellulosic biofuel to 1 – 2 million actual gallons of cellulosic biofuel, announced in their public conference call on August 8,

2013, strongly indicated that the production of cellulosic biofuel in 2013 was likely to be significantly lower than EPA's projection.

Even if both companies produced cellulosic biofuel at the high end of their projected production ranges after the KiOR revision (1 million ethanol-equivalent gallons for INEOS Bio, 3 million ethanol-equivalent gallons for KiOR) the total availability of cellulosic biofuel RINs generated in 2013 would still be 33% lower than the EPA projection in the final rule. Had the updated production estimate from KiOR's conference call on August 8, 2013, been available to EPA at the time the 2013 cellulosic biofuel standard was finalized, it is highly probable that it would have impacted the outcome of that standard. On these grounds, EPA determined that KiOR's updated production estimate is of central relevance to the 2013 cellulosic biofuel standard, as it provides substantial support for the argument that the regulation should be revised.

Although not relevant to EPA's action on the 2013 cellulosic standard, it should be noted that EPA does not anticipate that future modifications to company cellulosic biofuel production estimates that are received after the close of the comment period but within the period for parties to seek judicial review, will necessarily be grounds for the reconsideration of the cellulosic biofuel standard in future years. Here, reconsideration was granted due to the substantially reduced production estimates (from 3-5 million gallons to 1-2 million gallons) by one of only two companies expected to produce cellulosic biofuel in 2013. Any similar situation will be evaluated on a case-by-case basis. As the number of facilities from which cellulosic biofuel production increases, and as the potential production volume from each facility increases, it becomes increasingly less likely that changes in the production estimate from any single company

will be of central relevance to the overall cellulosic biofuel standard. The greater the number of companies expected to produce cellulosic biofuel, the more likely it is that a reduction in the expected volume from any single company would either be insignificant in the context of the total standard, or can be made up with higher production volumes from another, or more likely several other companies.

Our decision to grant reconsideration of the 2013 cellulosic biofuel standard has no impact on other 2013 RFS standards.

III. Cellulosic Biofuel Volume for 2013

EPA is directed by Section 211(o)(7)(D)(i) of the Clean Air Act to base the 2013 cellulosic biofuel standard on the lower of the “projected” production volume of cellulosic fuel in 2013 or the 1.0 billion gallon 2013 cellulosic biofuel “applicable volume” set forth in Section 211(o)(2)(B)(III) of the statute. In projecting biofuel production for a given year, EPA must consider an estimate provided by the Energy Information Administration (EIA), and may also consider additional available and relevant information. *API v. EPA*, 706 F.3d 474 (D.C. Cir. 2013). Since EPA is now tasked with making a “projection” after the year has ended, we believe the most appropriate information and data in this instance is the actual cellulosic biofuel production (in ethanol-equivalent gallons⁶) in 2013.

EPA tracks and publically reports the number of RINs generated in the RFS program through the EPA Moderated Transaction System (EMTS).⁷ There are two types

⁶ More than one RIN is generated for each physical gallon of renewable fuel that has a higher energy content than ethanol. For example, 1.7 RINs are generated for one physical gallon of cellulosic diesel fuel. Ethanol-equivalent gallons are used to project cellulosic biofuel production when setting the cellulosic biofuel standard, and RINs, generated on an ethanol-equivalent basis, are used to comply with the standard.

⁷ RFS2 EMTS Informational Data. See <http://www.epa.gov/otaq/fuels/rfsdata/2013emts.htm> (last accessed March 19, 2014).

of RINs that may be used to satisfy a company's cellulosic biofuel RVO: cellulosic biofuel RINs (D3) and cellulosic diesel RINs (D7). The total number of 2013 RINs available to satisfy the cellulosic biofuel RVO can be calculated by adding the number of D3 and D7 RINs generated in 2013 and subtracting the number of RINs generated in error.⁸ Using this method, the total number of valid RINs generated and which can be used towards the cellulosic biofuel obligation in 2013 is 810,185. This calculation for cellulosic biofuel RINs is shown in Figure III-1 below.

Figure III-1

Valid Cellulosic RINs Generated in 2013⁹

D3 RINs Generated	422,740
D7 RINs Generated	395,777
Total Cellulosic RINs Generated	818,517
D3 RINs Generated in Error	0
D7 RINs Generated in Error	8,332
Total Valid Cellulosic RINs Generated in 2013	810,185

IV. Percentage Standards for 2013

A. Background

The renewable fuel standards are expressed as volume percentages and are used by each refiner or importer to determine their Renewable Volume Obligation (RVO). Each standard applies to the sum of all gasoline and diesel produced or imported by an obligated party. The applicable percentage standard is set so that if every obligated party meets the

⁸ RINs may be generated in error for reasons such as improperly functioning flow meters, temperature volume correction errors, clerical errors, or fraud.

⁹ RIN numbers are from the EMTS (last accessed March 19, 2014).

percentages, then the amount of cellulosic biofuel used will meet the volumes required on a nationwide basis. As discussed in Section III, the required volume of cellulosic biofuel for 2013 is 810,185 ethanol-equivalent gallons.

Table IV.A-1

Volume for Use in Setting the Applicable Percentage Standards for 2013^a

Cellulosic biofuel	810,185
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^a Due to the manner in which the percentage standards are calculated, the volume is given in terms of ethanol-equivalent gallons

The formulas used in deriving the annual standards are typically based in part on estimates of the volumes of gasoline and diesel fuel, for both highway and nonroad uses, that are projected to be used in the year in which the standard will apply. However, as discussed below, for this rule we will use the most recent EIA estimate, published in March 2014. Producers of other transportation fuels, such as natural gas, propane, and electricity from fossil fuels, are not subject to the standards, and volumes of such fuels are not used in calculating the annual standards. Since the standards apply to producers and importers of gasoline and diesel, these are the transportation fuels used to set the standards, and then again to determine the annual volume obligations of an individual gasoline or diesel producer or importer.

B. Calculation of the Cellulosic Biofuel Standard

1. How Is the Standard Calculated?

The following formula is used to calculate the four percentage standards applicable to producers and importers of gasoline and diesel (see §80.1405):

$$\text{Std}_{\text{CB},i} = 100\% \times \frac{\text{RFV}_{\text{CB},i}}{(G_i - \text{RG}_i) + (\text{GS}_i - \text{RGS}_i) - \text{GE}_i + (D_i - \text{RD}_i) + (\text{DS}_i - \text{RDS}_i) - \text{DE}_i}$$

Where

$\text{Std}_{\text{CB},i}$ = The cellulosic biofuel standard for year i , in percent.

$\text{RFV}_{\text{CB},i}$ = Annual volume of cellulosic biofuel required by section 211(o) of the Clean Air Act for year i , in gallons.

G_i = Amount of gasoline projected to be used in the 48 contiguous states and Hawaii, in year i , in gallons.

D_i = Amount of diesel projected to be used in the 48 contiguous states and Hawaii, in year i , in gallons. This value excludes diesel used in ocean-going vessels.

RG_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in the 48 contiguous states and Hawaii, in year i , in gallons.

RD_i = Amount of renewable fuel blended into diesel that is projected to be consumed in the 48 contiguous states and Hawaii, in year i , in gallons.

GS_i = Amount of gasoline projected to be used in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

RGS_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

DS_i = Amount of diesel projected to be used in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

RDS_i = Amount of renewable fuel blended into diesel that is projected to be consumed in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

GE_i = Amount of gasoline projected to be produced by exempt small refineries and small refiners in year i , in gallons, in any year they are exempt per §§80.1441 and

80.1442, respectively. For 2013, this value is 0.12 billion gallons. See further discussion in Section IV.B.2 below.

DE_i = Amount of diesel projected to be produced by exempt small refineries and small refiners in year i , in gallons, in any year they are exempt per §§80.1441 and 80.1442, respectively. For 2013, this value is 0.14 billion gallons. See further discussion in Section IV.B.2 below.

The statute requires that EIA provide EPA in October of each year an estimate of the projected gasoline and diesel consumption in the forthcoming calendar year (as well as additional information on projected cellulosic biofuel and biomass diesel consumption), and EPA is to “determine” the annual percentage standards “based on” the information provided by EIA. This structure envisions standards enacted prior to the compliance year. The United States Court of Appeals for the District of Columbia Circuit recently interpreted this provision in the context of a challenge to the 2012 cellulosic biofuel standard. *API v. EPA*, 706 F.3d 474 (D.C. Cir. 2013). The Court held that the Act “[p]lainly . . . [does not] contemplate slavish adherence by EPA to the EIA estimate”; had Congress so intended, “it could have skipped the EPA ‘determination’ altogether.” *Id.* Instead, “EPA [i]s entitled . . . to read the phrase ‘based on’ as requiring great respect but allowing deviation consistent with that respect.” *Id.* Accordingly, the Court upheld EPA’s supplementation of EIA’s estimate with information EPA received from prospective biofuel producers—including information submitted after EPA had received EIA’s estimate—for the purpose of “determin[ing]” the 2012 cellulosic biofuel standard. *Id.*

For purposes of this rulemaking, we believe it is appropriate to rely on EIA's most recent reports of actual gasoline and diesel consumption in the United States in 2013 rather than previous projections, such as their October 2012 projection. Doing so allows a more accurate assessment of a percentage standard that will help to ensure that the volume of cellulosic biofuel we have determined should be used for compliance in 2013 will in fact be required. This approach is also consistent with our use of actual cellulosic biofuel production data for 2013, rather than projections, in deriving the cellulosic biofuel standard. We have used EIA's March 2014 Short-Term Energy Outlook (STEO)¹⁰ for the gasoline and diesel statistics. Gasoline and diesel volumes are adjusted to account for renewable fuel contained in the EIA projections. To estimate the ethanol and biodiesel projected volumes for the purposes of this rule, we have used the values¹¹ for ethanol and biodiesel used in 2013 that is provided in the March 2014 STEO.

2. Small Refineries and Small Refiners

In CAA section 211(o)(9), enacted as part of the Energy Policy Act of 2005, Congress provided a temporary exemption to small refineries (those refineries with a crude throughput of no more than 75,000 barrels of crude per day) through December 31, 2010. In our initial rulemaking to implement the new RFS program,¹² we exercised our discretion under section 211(o)(3)(B) and extended this temporary exemption to the few remaining small refiners that met the Small Business Administration's (SBA) definition of a small business (1,500 employees or less company-wide) but did not meet the

¹⁰ Energy Information Administration/Short-Term Energy Outlook – March 2014. (See <http://www.eia.gov/forecasts/steo/outlook.cfm> ; last accessed March 14, 2014).

¹¹ Energy Information Administration/Short-Term Energy Outlook – March 2014, (See <http://www.eia.gov/forecasts/steo/outlook.cfm> ; last accessed March 14, 2014).

¹² 72 FR 23900, May 1, 2007.

statutory small refinery definition as noted above.¹³ Because the Energy Independence and Security Act of 2007 did not alter the small refinery exemption in any way, the RFS2 program regulations maintained the exemptions for gasoline and diesel produced by small refineries and small refiners through 2010 (unless the exemption was waived).¹⁴

Congress provided two ways that small refineries could receive a temporary extension of the exemption beyond 2010. One was based on the results of a study conducted by the Department of Energy (DOE) to determine whether small refineries would face a disproportionate economic hardship under the RFS program. In March of 2011, DOE evaluated the impacts of the RFS program on small entities and concluded that some small refineries would suffer a disproportionate hardship.¹⁵ The other way that small refineries could receive a temporary extension is based on EPA determination of disproportionate economic hardship on a case-by-case basis in response to refiner petitions.¹⁶

The regulations in 80.1405 that specify formulas for calculating the annual renewable fuel standards require that EPA subtract from the total volume of gasoline and diesel estimated to be produced and imported in the compliance year the volume attributed to small refineries and small refiners that have received exemptions from RFS requirements for that year. Depending on the size of the exempt volume, and rounding, this may or may not have the effect of increasing the standard. The purpose of this aspect of the computation is to make it more likely that the appropriate volume of renewable fuel is used by obligated parties notwithstanding the small refinery/small refiner

¹³ 40 CFR 80.1141, 80.1142.

¹⁴ See 40 CFR 80.1441, 80.1442.

¹⁵ "Small Refinery Exemption Study: An Investigation into Disproportionate Economic Hardship," U.S. Department of Energy, March 2011.

¹⁶ 40 CFR 80.1441(e)(2), 80.1442(h).

exemptions. At the time the 2013 cellulosic biofuel standard was originally promulgated on August 6, 2013, only one small refinery exemption had been granted for the 2013 compliance year. At this time, EPA has approved three small refinery exemptions for 2013. These three refineries produced a combined total of approximately 820 million gallons of gasoline and 660 million gallons of diesel fuel in 2013. These volumes have been used in the calculations below in Section IV.B.3.¹⁷

3. *Cellulosic Standard*

The values of the variables used to derive the 2013 cellulosic biofuel standard are shown in Table IV.B.3-1.¹⁸ Terms not included in this table have a value of zero.

¹⁷ EPA's consideration of updated EIA data on 2013 gasoline and diesel use in the rule establishing the 2013 annual standards, and EPA's adjustment of that value to account for small refinery exemptions, are currently being reviewed in *Monroe v. EPA*, Nos. 13-1265, 13-1267, 13-1268 (D.C. Cir.). EPA notes that the cellulosic biofuel standard in this rule would remain unchanged if EPA used data provided in EIA's October 2012 letter to EPA for total gasoline and diesel in 2013 and assumed no small refinery exemptions in calculating the standard.

¹⁸ To determine the 49-state values for gasoline and diesel, the amounts of these fuels used in Alaska are subtracted from the totals provided by the Department of Energy. The Alaska fractions are determined from the EIA State Energy Data System (SEDS) 2012 Updates. (U.S. Gasoline Consumption (March 2014 STEO)=8.78 MMbbl/day; U.S. Ethanol Consumption (March 2014 STEO)=0.859 MMBD; U.S. Diesel Fuel Consumption (March 2014 STEO)=3.49 MMBD; U.S. Biodiesel Consumption (March 2014 STEO)=0.086 MMBD; U.S. Diesel Ocean-going vessels (AEO2013)=52.429TBtu.) Alaska Gasoline (2012SEDS)=6.499 MMbbl; Alaska Ethanol (2012 SEDS)=0.728 MMbbl; Alaska Diesel (2012 SEDS)=6.375 MMbbl; Alaska Biodiesel (Estimate based on biodiesel production capacity per EIA)=0; Alaska Ocean-going vessels estimated at 4.5% of U.S. vessel bunkering and applied to the U.S. ocean-going vessel volume (information provided by EIA).

Table IV.B.3-1

Values for Terms in Calculation of the Standard (billion gallons)

Term	Value
$RFV_{CB,2014}$	0.0008
G_{2013}	134.17
D_{2013}	53.14
RG_{2013}	13.14
RD_{2013}	1.61
GS_{2013}	0
RGS_{2013}	0
DS_{2013}	0
RDS_{2013}	0
GE_{2013}	0.82
DE_{2013}	0.66

Using the volumes shown in Table IV.B.3-1, we have calculated the percentage cellulosic biofuel standard for 2013 as shown in Table IV.B.3-2.

Table IV.B.3-2

Percentage Standards for 2013

Cellulosic biofuel	0.0005%
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V. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

There are no new information collection requirements associated with the standards in this rulemaking. The standards impose no new or different reporting requirements on regulated parties. The existing information collection requests (ICR) that apply to the RFS program are sufficient to address the reporting requirements in the regulations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of

less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule reconsiders the annual volume requirement for cellulosic biofuel for 2013 which is being reduced from the total of 6 million ethanol-equivalent gallons finalized in the 2013 RFS annual rule and published on August 15, 2013 to 810,185 ethanol-equivalent gallons. The impacts of the RFS2 program on small entities were already addressed in the RFS2 final rule promulgated on March 26, 2010 (75 FR 14670), and this rule will not impose any additional requirements on small entities beyond those already analyzed.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. This action implements mandate(s) specifically and explicitly set forth by the Congress in Clean Air Act section 211(o) without the exercise of any policy discretion by EPA. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and merely revises the 2013 cellulosic biofuel standard to reflect actual production in 2013 for the RFS program.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action revises the 2013 annual cellulosic biofuel standard for the RFS program and only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will be implemented at the Federal level and affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments would be affected only to the extent they purchase and use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended

to mitigate health or safety risks and because it implements specific standards established by Congress in statutes (section 211(o) of the Clean Air Act).

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action simply revises the 2013 annual cellulosic standard for renewable fuel under the RFS program.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action does not relax the control measures on sources regulated by the RFS regulations and therefore will not cause emissions increases from these sources.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

VI. Statutory Authority

Statutory authority for this action comes from section 211 of the Clean Air Act, 42 U.S.C. 7545.

List of Subjects in 40 CFR Part 80

Administrative practice and procedure, Air pollution control, Diesel fuel, Environmental protection, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable fuel.

Dated: April 22, 2014

Gina McCarthy,
Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

2. Section 80.1405 is amended by revising paragraph (a)(4)(i) to read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

(a) * * *

(4) * * *

- (i) The value of the cellulosic biofuel standard for 2013 shall be 0.0005 percent.

* * * * *

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